From: Chris Young
To: Microsoft ATR
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Subject: microsoft settlement

To whom it may concern,

I am opposed to the Propsed Revised Final Judgment for many reasons, but I shall discuss five points here.

1. Microsoft's power over the OEMs is worded in secret and confidential agreements between the OEM and Microsoft. The Final Judgement does nothing to expose all forms of restraint or potential retaliations hidden in those agreements, only those known today.

There is an attempt to make sure that Microsoft uses terms and conditions that are uniform across the OEMs, however it is well known the OEMs are currently forbidden (because of the confidential agreements imposed upon them by Microsoft as a condition for selling the software) to discuss openly about retaliatory terms and conditions. This stranglehold practice cannot continue.

It must be allowed for OEMs to discuss terms and conditions of these contracts without being "gagged" or retaliated against by Microsoft. There is nothing in the Final Judgment that would prevent Microsoft from adding future terms and conditions that would be considered by some to be retaliatory in nature. And if the agreements are considered confidential between on OEM and Microsoft, there is no ability for the OEM to act without breaching the agreement.

There is nothing in the Final Judgment to allow the OEM to offer non-Microsoft Operating Systems and any related bootloader programs as the consumer's *first* choice for an operating system in a multi-boot system. It is well known that the existing Microsoft/OEM contracts prevent a non-Microsoft Operating System from being offered as a *first* choice to consumers, only as second or subsequent choices. The Final Judgment wording would continue to allow Microsoft to prevent competition. This wording is an example of what Microsoft has done in the past to get around the previous Anti-Trust judgment.

2. The Final Judgment allows for a vast loophole for Microsoft in Section III J.

For Microsoft to not be required to disclose an API or related information, all Microsoft must do is label it as a necessary component for "security". Many third party software packages will be rendered useless once Microsoft decides through this "security" loophole who can and cannot see what's under the covers.

Microsoft lawyers (probably unbeknowst to DOJ lawyers) have carefully crafted wording to deny Open Source projects as a party in the revealing of any API or documentation. Open Source projects such as SAMBA, a competitor to Microsoft's file and print sharing services, may not fit the definition in III J (2).

"(a) has no history of software counterfeiting or piracy or willful violation of intellectual property rights, (b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, ..."

The language is horribly slanted towards Microsoft.

It appears that Microsoft is the party which determines whether an organization will meet the criteria set forth and not the Enforcement Authority or other third party.

Condition (a) stipulates that the organization cannot have a "willful violation of intellectual property rights." Who determines whether a violation existed or at all and whether it was "willful"? Apparently Microsoft does.

Some Open Source organizations have indeed reverse engineered what Microsoft might consider their intellectual property. But it is odd that now that Microsoft will be required to expose these APIs. Those that were deemed by Microsoft (and not any judicial entity) to have violated those same API property rights in the past would be excluded from now legally obtaining those rights.

And Microsoft's choice of who is in violation of its intellectual property rights may have nothing to do with Microsoft's choice not to prosecute them in the past for those past violations. This wording is wholly inadequate.

Clause (b) allows Microsoft to determine if there is a business need to an API. Why should any company be required to disclose to Microsoft the plans on how that company intends to produce a competitive product? Wouldn't that give Microsoft the product idea for themselves to develop and exploit, potentially beating that company to market?

Clauses (b) and (c) also allow Microsoft to determine if an organization is a business or not. An Open Source project is not necessarily (and in fact, most are not) a business in the captitalism model. There is necessarily no corporate structure, shareholders, or employees. There sometimes is simply a loose organization of individuals from around the world. However, these organizations produce some of the world's best

software, much of which directly competes with Microsoft's programs. The Final Judgment wording is easily interpreted to exclude Open Source projects and organizations and this wording is simply inadequate.

3. The Technical Committee (TC) is wrought with problems.

3.a. Why does Microsoft have the right to select a member? Isn't this allowing for a fox to guard the hen house?

3.b Why does Microsoft pay the costs for the TC? Doesn't this create a conflict of interest?

3.c The TC has no authority to impose fines, create injuctions, or limit actions against Microsoft.

3.d The TC is bound by confidentiality agreements to which, of course, Microsoft will require full adherance, thus severely limiting what the TC can discuss with non-parties. The citizenry of the US (and the world) has a right to know the details of a dispute, but when the dispute is classified as confidential at Microsoft's sole discretion, this really amounts to another gag order. How can this be good?

I find the TC severly lacking in its ability to curb any Microsoft behavior at all, especially when there is no real enforcement power given to this body, and when 1.5 people on the TC are appointed by Microsoft, and when the TC's payroll and expenses are reimbursed by Microsoft.

4. The term of five years is wholly inadequate. It has taken just as long to process this case as the proposed five-year term of this agreement.

The term should be indefinite. It should also be on the burden of Microsoft to prove at a later date that they have not violated Anti-Trust laws for a period of, say, no less than ten years before the DOJ should even consider ending the agreement. Microsoft has proven that they are willful law breakers.

After the previous settlement, Microsoft lawyers and executives set out to push the envelope of what was legal. Theydid not abide by the spirit of the last agreement and cannot be trusted to abide by any spirit of this one. Their past actions indicate that once again, their lawyers will be looking to exploit any and all weaknesses in this agreement.

5. There is absolutely no attempt to address restitution for any injured parties or address fines against Microsoft for breaking the law.

None.

Microsoft has $38 billion in cash and this Final Judgment does nothing to address the fact that Microsoft made that money by its illegal acts. I don't know how to explain to my family why one of the biggest corporate criminals in the world was allowed to keep the money they illegally made. The DOJ lawyers should be ashamed of themselves.

In conclusion, I do not support this proposed Final Judgment. It is inadequate to keep Microsoft in check and makes no attempt at restitution or fines. I respectfully ask that this proposed Final Judgment be rejected.

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